

JAMES M. CHUDNOW
LAURENT A. GIESBERT
JEAN-CHRISTOPHE GIESBERT

IBLA 84-639

Decided November 20, 1985

Appeal from notices of the Montana State Office, Bureau of Land Management, requiring execution of special stipulations as conditions to issuance of noncompetitive oil and gas leases M-56238, M-56241, M-56388, M-56863, and M-57934.

Appeal dismissed.

1. Oil and Gas Leases: Stipulations--Rules of Practice: Appeals: Notice of Appeal

Where an oil and gas lease offeror is notified he is allowed 30 days to execute restrictive stipulations as a condition to issuance of an oil and gas lease by the Department and is informed that failure to do so will result in rejection of the offer, there is no right to appeal that notice. It is not a final Departmental decision from which an appeal may be taken.

APPEARANCES: James M. Chudnow, Laurent A. Giesbert, and Jean-Christophe Giesbert, pro sese.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Appellants filed five noncompetitive over-the-counter lease offers, for national forest lands in Montana. 1/ The Montana State Office, Bureau

<u>Lease</u>	<u>Offer Filed</u>	<u>Parties-in-</u>	<u>BLM</u>	<u>National</u>	<u>Decision Date</u>	<u>Forest</u>	<u>County</u>
M-56238	Aug. 23, 1982	James Chudnow	Apr. 25, 1984	Kootenai	Lincoln	M-56241	Aug. 23, 1982
James Chudnow		Laurent Giesbert	Apr. 25, 1984	Kootenai	Lincoln		
M-56388	Sept. 16, 1982	James Chudnow	May 11, 1984	Kaniksu	Lincoln/		
		Sanders					
M-56863	Oct. 29, 1982	James Chudnow					
		Laurent Giesbert	Apr. 8, 1984	Kootenai	Lincoln		
M-57934	Feb. 5, 1983	James Chudnow					
		Laurent Giesbert					
		Jean-Christophe					
		Giesbert	Apr. 30, 1984	Beaverhead			
Beaverhead							

of Land Management (BLM), notified appellants it proposed to impose restrictive stipulations as a condition to lease issuance 30 days following receipt of the stipulations by the lessees. The notices stated that failure to comply would result in rejection of the lease offers. Appellants Giesbert and Chudnow then filed an appeal and joint statement of reasons in which they objected to imposition of the proposed stipulations on five of the leases contending the stipulations imposed are so vague as to prevent appellants from understanding their terms. Their appeal to this Board questions use of three types of special stipulations: seasonal restrictions to protect big game, year-round no-surface-occupancy to protect grizzly bears, and a stipulation prohibiting drilling on steep slopes. 2/

Appellants object to a no-surface-occupancy stipulation for "[s]teep slopes, high potential for erosion" on the "[e]ntire lease application area" of lease M-56241. Appellants assert lease M-56241 is not properly restricted from drilling on steep slopes because three adjacent sections in neighboring leases are not similarly burdened, although presumably the "slope" would be similar on the adjacent leases.

Appellants point out that unspecified "[p]ortions of" described areas which make up 95 percent of lease M-56238, are made subject to a seasonal surface occupancy stipulation to protect big game winter range. In lease M-56863, the three appellants object that unspecified "portions of" described areas, which make up 9 percent of the lease, are subjected to the same seasonal surface-occupancy stipulation, while on "portions of" the described areas which constitute 88 percent of the lease, no-surface-occupancy is allowed year round due to "[g]rizzly bear management situation land 3 (spring range)." Appellants also object to the requirement that unidentified "[p]ortions of" described areas in lease M-56388 are subjected to a no-surface-occupancy stipulation due to steep slopes and grizzly bear management (although a contour map in the M-56388 case file is marked to show the zones in which these restrictions would occur). The BLM case files for leases M-56863 and M-56388 indicate, in notations to the proposed grizzly bear protection stipulation, that the restrictions will not be made definite until a pending grizzly bear study is completed. Appellants argue the stipulations attached to leases M-56238, M-56388, and M-56863 are improper because they fail to specify the portions of the leases affected by the restrictions imposed. They indicate a willingness to withdraw some acreage from their offers, but claim to lack sufficient information to do so.

2/ Appellants do not contest the partial suspension of offers M-56388, M-56863, and M-57934 for lands included in proposed and designated wilderness areas and the partial rejection of M-56238 due to the lack of Federal ownership of oil and gas rights. As to lease M-57934, appellants claim that an earlier oil and gas lease application for the same land was rejected, but has erroneously been permitted to retain priority for some of the land applied for by appellants. The case record for lease M-57934 indicates there was an earlier offer for part of these lands. As to this claimed error, however, examination of the case record indicates the action taken by BLM was proper and has not prejudiced appellants. This objection by appellants is therefore rejected.

In response to appellants' statement of reasons, BLM has submitted an explanatory document. It is not clear whether appellants were sent a copy of this agency response, which is an extract of a Forest Service decision in an action dated January 31, 1984. In response to what appears to have been a similar challenge by Atlantic Richfield Company in an unrelated case concerning surface-occupancy stipulations restricting drilling to protect grizzly bears, the decision states:

The RF [Regional Forester] states that the lack of detailed grizzly population information has no bearing on our ability to map grizzly habitat and that sufficient information exists to identify Management Situations 1 and 3 (spring habitats). We believe this is realistic because the grizzly bear is known to occur in the general area.

Forest Service decision dated Jan. 31, 1984, at page 2. This decision therefore indicates it was considered unnecessary, in the case there under review, to await further studies before pinpointing areas likely to be restricted to protect the grizzly bear.

[1] The Secretary of the Interior, through BLM, has the discretionary authority to require execution of special stipulations as a condition precedent to the issuance of oil and gas leases for national forest lands in order to protect environmental and other land use values. James M. Chudnow, 78 IBLA 317 (1984); Diane B. Katz, 47 IBLA 177 (1980); 43 CFR 3101.1-2. Such stipulations will be upheld on appeal if they are reasonable means to accomplish proper Departmental purposes. Cartridge Syndicate, 25 IBLA 57 (1976). In these cases, however, appellants have not waited for or obtained a decision from BLM concerning the objections raised to the various stipulations proposed. They have presented this appeal from the notices issued informing them of restrictive stipulations to be imposed on the leases. Whatever the merits of any of the objections raised, therefore, these appeals have not been taken from a final decision which would permit this Board to exercise the appellate jurisdiction conferred upon it by the Secretary.

In Fortune Oil Co., 71 IBLA 153, 90 I.D. 84 (1983), a similar case involving the execution of stipulations to an oil and gas lease, the Board made the following finding:

[W]here BLM has required execution of stipulations subject to rejection for failure to comply, a party has a choice of three courses of action that would have three different results. The party may execute and return the stipulations timely and be issued the lease. He may execute the stipulations under protest; meaning, that although he objects to the stipulations and protests their inclusion, he wants the lease regardless. In these circumstances, BLM would then be required to examine the protest and rule on it in a decision granting right of appeal and issuing the lease. A party's third choice would be not to comply, await rejection of his offer and then appeal to this Board.

Id. at 156-7, 90 I.D. at 86.

In Fortune, BLM had notified the offeror it had 30 days from receipt of the notice to execute and return stipulations and that failure to do so would result in rejection of its offers. The notices while formed as decisions, expressly stated they were interlocutory and no appeal could be taken. Fortune appealed anyhow. BLM treated the appeals as protests and dismissed them. It also rejected the lease offers, which resulted in the Fortune appeal. The Board held BLM had properly characterized its decisions as interlocutory and had "properly" treated Fortune's initial appeals as protests. The rule established by Fortune is that where BLM affords an offeror a period of time in which to execute stipulations as a condition to issuance of an oil and gas lease and states that failure to comply will result in rejection of the offer, the decision is interlocutory, with no right of appeal.

This appeal is governed by the Fortune rule. BLM notified the offerors they had 30 days to execute various stipulations and failure to do so would result in rejection of the offers. There were no final decisions issued by BLM. BLM did not reject appellants' offers. BLM's decisions were interlocutory. ^{3/} Accordingly, this appeal is dismissed.

By way of dicta it should be observed, however, that the Forest Service decision document relied upon by BLM to dispose of appellants' objections does not directly address their objections to the proposed big game or steep slope stipulations. It has no relevance to appellants' primary concern, which is the need to identify the actual location of the restricted areas. It also has no bearing on the need for a no-surface-occupancy stipulation to protect steep slopes, when adjacent leases (which apparently have similar terrain) were not burdened by the restriction.

Appellants' primary objection is that certain of the stipulations are vague because they do not specify the "portions" of leased lands to be restricted from use. Clearly these are difficulties inherent in describing areas to be protected. See James M. Chudnow, 78 IBLA at 318. However, here appellants lack a means to identify the restricted areas. Listing the lands to be included in a lease and then imposing stipulations on "[p]ortions of" those lands, without further elaboration as to the nature or location of those "portions" is not sufficiently specific to identify the nature of the interest leased. Were this objection urged on appeal from a final decision, the appellant would prevail. Upon return of the case files BLM should treat the "appeal" as a protest. ^{4/}

^{3/} Although the notices issued by BLM in this case did not state they were interlocutory, that fact does not distinguish this case from Fortune. BLM's characterization of its action is not controlling; the Board determines its jurisdiction. Utah Wilderness Ass'n, 80 IBLA 64, 91 I.D. 165 (1984).

^{4/} This Board does not imply lease issuance should be indefinitely delayed until all contemplated studies are completed. See Ida Lee Anderson, 67 IBLA 340, 343 (1982). See also Forest Service decision, supra at 2, submitted by BLM.

Nonetheless, because this appeal was premature, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Franklin D. Arness
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Bruce R. Harris
Administrative Judge

